



## State of Utah

### Department of Natural Resources

MICHAEL R. STYLER  
*Executive Director*

### Division of Oil, Gas & Mining

JOHN R. BAZA  
*Division Director*

JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

November 14 2005

CERTIFIED RETURN RECEIPT  
7002 0510 0003 8603 2724

Mark Carter  
MMG Mining  
3655 Lupin Way  
St. George, Utah 84790

Subject: Reassessment of Cessation Order MC-05-02-02(1), MMG Mining, Bald Knoll Mine, S/025/012, Kane County, Utah

Dear Mr. Carter :

The proposed civil penalty assessment for the above referenced cessation order was sent to you on August 17, 2005. At that time the abatement had not been completed and some of the facts surrounding the violation were not available. In accordance with rule R647-7-105, the penalty is to be reassessed when it is necessary to consider facts which were not reasonably available on the date of the issuance of the proposed assessment. Following is the reassessment of the penalty for the cessation order:

- MC-05-01-06(1)– Violation 1 of 1 \$880

The enclosed worksheet specifically outlines how the violation was reassessed. Even though the violation has now been terminated, you are still required to pay the penalty.

Under R647-7-106, there are two informal appeal options available to you:


1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director or Associate Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.

Mark Carter  
Page 2 of 6  
S/025/012  
November 14, 2005

2. If you wish to review the penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of the cessation order will stand, the reassessed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the reassessment.** Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,



Daron R. Haddock  
Assessment Officer

Enclosure: Worksheets  
cc: Vickie Southwick, Exec. Sec.  
Vicki Bailey, Accounting  
O:\M025-Kane\S0250012-BaldKnoll\non-compliance\ReAssessment-CO.doc



**WORKSHEET FOR ASSESSMENT OF PENALTIES**  
**DIVISION OF OIL, GAS & MINING**  
**Minerals Regulatory Program**

COMPANY / MINE MMG Mining/ Bald Knoll PERMIT S/025/012

NOV / CO # MC-05-02-02(1) VIOLATION 1 of 1

ASSESSMENT DATE November 10, 2005

ASSESSMENT OFFICER Daron R. Haddock

**I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)**

- A. Are there previous violations, which are not pending or vacated, which fall within, three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>none</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

**TOTAL HISTORY POINTS** 0

**II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)**

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event  
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?



2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *An Operator is required to obtain a permit from the Division of Oil Gas and Mining prior to conducting mining operations. Some acres have been disturbed at this location without revising the permit to do so. While the Operator has a permit for a small mine, which allowed disturbance up to 5 acres, the operation has expanded to 8.94 acres. 3.26 acres were planned for reclamation but only 2.16 acres were actually reclaimed and this area has not been released. A new entrance has been constructed into the quarry area. This entrance is in addition to the quarry entrance off a county road. Disturbance has actually occurred.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 8

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector stated that the operator has disturbed more acres of land than what has been approved for disturbance. The damage was the loss of vegetation and soil resources from the area disturbed. Further discussion with the inspector revealed that the damage is probably temporary. While the soil and vegetation have been disturbed, the site could still be reclaimed. Even though the damage is extensive over the property, it probably does not leave the site of disturbance. Damage is accessed in the lower 1/3 of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement?                       
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS                     

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

TOTAL SERIOUSNESS POINTS (A or B) 28

**III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)**

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 8

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector indicated that the violation was the result of the Operator not taking reasonable care in keeping track of the acreage disturbed. The Operator had planned to reclaim 3.26 acres in 2004, but did not complete the reclamation before he had disturbed additional area. An additional entrance and road were built into the quarry that added acreage to the total disturbance. This indicates indifference to the rules or misunderstanding of the rules. A prudent operator would understand the need to keep within the approved boundaries and obtain approval prior to disturbing an area. The Operator was negligent in this regard, thus the assignment of points in the middle part of the negligence range.*

**GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)**

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?  
IF SO--EASY ABATEMENT

Easy Abatement Situation

X	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
X	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	
X	Normal Compliance	0
	(Operator complied within the abatement period required)	

(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

\*Assign in upper or lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- |   |   |             |
|---|---|-------------|
| X | Rapid Compliance  | -11 to -20* |
|   | (Permittee used diligence to abate the violation)   |             |
| X | Normal Compliance   | -1 to -10*  |
|   | (Operator complied within the abatement period required)  |             |
| X | Extended Compliance   | 0           |
|   | (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete) |             |
|   | (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)   |             |

EASY OR DIFFICULT ABATEMENT? Difficult

ASSIGN GOOD FAITH POINTS -8

PROVIDE AN EXPLANATION OF POINTS:

\*\*\* *Since plans were required for abating this violation the abatement is considered to be difficult. The operator was required to submit a Notice of Intent for a large mining operation by October 17, 2005. An extension of time to November 4, 2005 was subsequently requested and granted. The LMO was actually received November 4, 2005 as scheduled. The Operator did comply within the abatement period and receives good faith points in the mid to upper part of the normal compliance range.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # MC-05-02-02(1)

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>28</u>
III.	TOTAL NEGLIGENCE POINTS	<u>8</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-8</u>
	TOTAL ASSESSED POINTS	<u>28</u>

TOTAL ASSESSED FINE \$ 880